

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:

BRASHINDA MOORE-YOUNG,

Complainant,

and

FRY'S ELECTRONICS,

Respondent.

CHARGE NO(S): 2007CN0855

EEOC NO(S): N/A

ALS NO(S): 07-676

**NOTICE**

You are hereby notified that the Illinois Human Rights Commission has not received timely exceptions to the Recommended Order and Decision in the above named case. Accordingly, pursuant to Section 8A-103(A) and/or 8B-103(A) of the Illinois Human Rights Act and Section 5300.910 of the Commission's Procedural Rules, that Recommended Order and Decision has now become the Order and Decision of the Commission.

STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION

Entered this 9<sup>th</sup> day of April 2010

N. KEITH CHAMBERS  
EXECUTIVE DIRECTOR

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

<b>IN THE MATTER OF:</b>	)	
	)	
<b>BRASHINDA MOORE-YOUNG,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>and</b>	)	
	)	<b>Charge No.: 2007CN0855</b>
	)	<b>EEOC No.: N/A</b>
<b>FRY'S ELECTRONICS,</b>	)	<b>ALS No.: 07-676</b>
	)	
<b>Respondent.</b>	)	<b>Judge Gertrude L. McCarthy</b>

**RECOMMENDED ORDER AND DECISION**

On September 4, 2007, Complainant filed her *Complaint of Civil Rights Violation* with the Illinois Human Rights Commission ("Commission"). The Complaint alleges discrimination based on marital status, in violation of the Illinois Human Rights Act ("Act"). On October 27, 2008, Respondent filed its *Motion to Dismiss* for failure to state a claim upon which relief can be granted under the Act, further requesting attorneys' fees.

**FINDINGS OF FACT**

The following facts were derived from the record file in this matter:

1. Complainant, Brashinda Moore-Young, filed her Complaint with the Commission on September 4, 2007, alleging discrimination based on marital status.
2. During her employment with Respondent, Complainant was married to Mario Young, a fellow associate at the same store.
3. Respondent terminated Complainant's employment on August 23, 2006.
4. The Complaint alleges marital status discrimination, in that Respondent allegedly terminated Complainant for violating its policy regarding the employment of

relatives, while at the same time failing to terminate other married couples and relatives working together at the same store.

### **CONCLUSIONS OF LAW**

1. The Commission has no jurisdiction over the subject matter of this dispute.

2. Complainant has failed to allege any facts which would state a claim for relief under the Act.

3. The Complaint and resulting litigation were not so frivolous, unreasonable, or groundless as to warrant an award of attorneys' fees.

### **DISCUSSION**

#### ***I. Motion to Dismiss Standard***

A motion to dismiss “challenges the legal sufficiency of a complaint based on defects apparent on its face.” *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429, 856 N.E.2d 1048, 1053 (2006) (citing *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 364, 821 N.E.2d 1099, 1110 (2004)). In reviewing the sufficiency of a complaint, a court “construe[s] the allegations in the complaint in the light most favorable to the plaintiff[.]” accepting as true all well-pleaded facts and all reasonable inferences drawn therefrom. *Marshall*, 222 Ill. 2d at 429 (citing *King v. First Capital Fin. Servs. Corp.*, 215 Ill. 2d 1, 11-12, 828 N.E.2d 1155, 1161 (2005)). A court should not dismiss a cause of action “unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery.” *Id.* (citing *Canel v. Topinka*, 212 Ill. 2d 311, 318, 818 N.E.2d 311, 317 (2004)).

#### ***II. The Complaint fails to state a claim for which relief can be granted under the Act.***

“Marital status discrimination under the Illinois Human Rights Act **does not encompass no-spouse policies in the workplace.**” (emphasis added.) *Boaden et al.*

*v. Dept. of Law Enforcement*, 171 Ill. 2d 230, 239, 664 N.E.2d 61, 66, 215 Ill. Dec. 664, 669 (1996). “As defined under the Act, prohibited marital status discrimination is discrimination based on an individual’s ‘legal status’ as married, single, separated, divorced, or widowed.” *Boaden*, 171 Ill. 2d at 238. Specifically, “marital status discrimination does not encompass policies based on the identity of one’s spouse.” *Id.*

In *Boaden*, the Supreme Court of Illinois enunciated its position regarding marital status discrimination under the Act. *Boaden* dealt with the unwritten no-spouse policy of the Illinois State Police, which prohibited two married individuals from working together on the same shift in the same patrol area. *Id.* at 232. Two state troopers challenged the policy as discriminatory, and although the no-spouse policy was later voluntarily rescinded, the Supreme Court of Illinois ultimately determined that it, along with all other no-spouse workplace policies, was outside the scope of the Act. *Id.* at 234, 238-40. In determining that marital status discrimination does not encompass no-spouse policies, the Supreme Court of Illinois examined the actual definition of “marital status” under the Act: “‘Marital status’ means the *legal status* of being married, single, separated, divorced or widowed.” *Id.* at 238 (quoting 775 ILCS 5/1-103(J) (West 1992) (emphasis added)). The Court concluded that, because the Act specifically defines marital status as the actual legal status of the individual, not the specific identity of one’s spouse, marital status discrimination under the Act must, by definition, refer only to discrimination based on the individual’s legal status. Therefore, because no-spouse policies are based on the identity of the individual, *i.e.*, who is working with whom, etc., and do not discriminate against an individual for being married or not, they are not discriminatory as defined within the scope of the Act. *Id.* at 238-240.

In this case, Complainant “alleges that the sole reason for her discharge was her status, that is, that she was married to Mario Young, wrongfully accused of theft.” (Answer Mot. Dismiss ¶ 2). Complainant confuses marital status, *i.e.*, whether or not

she was married, with the identity of her spouse. To state a claim for marital status discrimination under the Act, Complainant needs to allege that Respondent discriminated against her because she was married, not because she was married to a particular individual.<sup>1</sup> Therefore, given that the Supreme Court of Illinois has specifically determined marital status discrimination under the Act to pertain only to discrimination based on status, not spousal identity, Complainant has stated a claim wholly outside the scope of the Act.

***III. The Complaint and resulting litigation were not so frivolous, unreasonable, or groundless to entitle Respondent to an award of attorneys' fees.***

Under the Act, attorneys' fees may be granted "if the hearing officer concludes that the complaint was frivolous, unreasonable or groundless or that the complainant continued to litigate after it became clearly so." 775 ILCS 5/8A-102(1)(5). In this case, Complainant was fired, allegedly in a manner that singled her and her husband out from other related employees. Complainant made a good faith argument for relief, which included addressing the effect of *Boaden* on her case. Therefore, although Respondent's *Motion to Dismiss* is well-grounded based on the holding in *Boaden*, Respondent has failed to sufficiently show that the Complaint and underlying litigation, although perhaps misguided as to the effect of the Supreme Court decision, were frivolous, unreasonable, or groundless. See *Bates and Pathway Financial, IHRC, 4860, May 7, 1993* which grants a motion to dismiss but refuses to award attorneys' fees where the respondent failed to meet the § 8A-102(1)(5) standard).

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<sup>1</sup> See *Davis v. Haas & Haas Inc.*, 296 Ill. App. 3d 369, 373, 694 N.E.2d 588, 291, 230 Ill. Dec. 619, 622 (3d Dist. 1998), stating:

In *Boaden*, 171 Ill. 2d at 238, 215 Ill. Dec. at 668, 664 N.E.2d at 65, the court held that the Act does not extend to marital status discrimination actions based on the identity of an employee's spouse. In reaching this holding the court analyzed the definition of marital discrimination under the Act and interpreted it to include only those charges of marital discrimination based on an individual's legal status, i.e. married, single, divorced.

### **RECOMMENDATION**

Based upon the foregoing, I hereby recommend:

1. That the Complaint and underlying charge, Ch. No. 2007CN0855 be dismissed with prejudice.
2. That Respondents request for attorneys' fees be denied.

HUMAN RIGHTS COMMISSION

BY: \_\_\_\_\_

GERTRUDE L. MCCARTHY  
ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW SECTION

ENTERED: June 29, 2009